

**BEFORE THE
ILLINOIS COMMERCE COMMISSION**

In the Matter of)	
)	
Petition for Arbitration of)	
XO COMMUNICATIONS SERVICES, INC.)	
Of an Amendment to an Interconnection)	DOCKET NO. _____
Agreement with SBC ILLINOIS INC.)	
Pursuant to Section 252(b))	
of the Communications Act of 1934, as)	
Amended)	

**PETITION FOR ARBITRATION AND
REQUEST FOR WAIVER OR VARIANCE OF COMMISSION'S RULES**

Date of Original Negotiation Request – June 25, 2005 (by stipulation)

135th day thereafter – November 7, 2005

160th day thereafter – December 2, 2005

9 months thereafter – March 25, 2006

Kristin Shulman
Executive Director, Regulatory Affairs
XO Communications Services, Inc.
810 Jorie Blvd.,
Oakbrook, IL 60523

Telephone: (630) 371-3311
Facsimile: (469) 461-7159

Thomas H. Rowland
Stephen J. Moore
Kevin D. Rhoda

Rowland & Moore LLP
200 West Superior Street
Suit 400
Chicago, Illinois 60610
Telephone: (312) 803-1000
Facsimile: (312) 475-1589

Dated: December 2, 2005

**PETITION FOR ARBITRATION AND
REQUEST FOR WAIVER OR VARIANCE OF COMMISSION'S RULES**

XO Communications Services, Inc. ("XO"), by its attorneys and pursuant to Section 252(b) of the Communications Act of 1934, as amended (the "Communications Act"), The Illinois Public Utilities Act ("PUA") 220/5 ILCS 13-101 et seq., 83 IL Admin Code Part 761, and other applicable state and federal statutes, rules and regulations, and decisions, hereby files with the Illinois Commerce Commission (the "Commission") this Petition for Arbitration and Request for Variance of Commission's Rules (the "Petition") seeking resolution of certain disputed issues arising between XO and SBC Illinois, Inc. ("SBC") (collectively, the "Parties") in the negotiation of an amendment to the Parties' existing interconnection agreement in Illinois, as well as a waiver or variance of Commission's arbitration rules. In support of this Petition, XO states as follows:

I. DESIGNATED CONTACTS

1. All communications, filings, and related submissions in this proceeding, including but not limited to, correspondence, notices, inquiries, and orders, should be served upon the following designated contacts for XO:

Thomas H. Rowland
Stephen J. Moore
Kevin D. Rhoda

ROWLAND & MOORE LLP
200 West Superior Street
Suite 400
Chicago, IL 60610
(312) 803-1000
(312) 475-1589
tom@telecomreg.com

steve@telecomreg.com
krhoda@telecomreg.com

with a copy to:

Kristin Shulman
Executive Director, Regulatory Affairs
XO Communications Services, Inc.
810 Jorie Blvd.
Oakbrook, IL 60523
Telephone: (630) 371-3311
Facsimile: (469) 461-7159
Kris.Shulman@xo.com

Pursuant to 83 Illinois Administrative Code Part 761, XO states that it will accept electronic service in this proceeding.

II. STATEMENT OF FACTS

2. SBC is an incumbent local exchange carrier ("ILEC"), as defined by the Communications Act. *See* 47 U.S.C. § 251(h). To the best of XO's knowledge, SBC's executive offices are located at Four SBC Plaza, 311 S. Akard, Dallas, TX 75202-5398. Within its operating territory, including Illinois, SBC has, at relevant times, been a dominant provider of telephone exchange service.

3. XO is a leading facilities-based competitive provider of telecommunications services formed under the laws of the State of Delaware, and having its principal place of business at 11111 Sunset Hills Dr., Reston, VA 20190. XO offers a complete set of telecommunications services, including local and long distance voice services, as well as data services. In Illinois, XO is authorized by the Commission to provide local exchange and long distance communications services pursuant to ICC Docket No. 97-0145. While XO provides service through its facilities-based networks, XO is still dependent on leased facilities,

including loops and dedicated transport that it purchases from incumbent local exchange carriers like SBC.

4. XO has an interconnection agreement with SBC, which was approved by the Commission on November 1, 2001. This interconnection agreement is currently effective.

5. On February 4, 2005, the Federal Communications Commission (the “FCC”) released its Triennial Review Remand Order (“TRRO”)¹ which, among other things, required the incumbent local exchange carriers (“ILECs”) to provide access to certain unbundled network elements.

6. Following the effective date of the requirements of the *Triennial Review Remand Order*, XO notified SBC that it wanted to establish a negotiation schedule to negotiate “conforming changes” to the Parties’ interconnection agreement to implement the requirements of the *Triennial Review Remand Order*.

7. SBC agreed with XO that, for purposes of section 252 interconnection negotiations, the request for negotiations was made on June 25, 2005, which means that the window for filing for arbitration under Section 252 of the Federal Act ends on December 2, 2005. Exhibit 1 to this Petition is a Stipulation entered into by SBC and XO.

8. Subsequent to the request for negotiations, XO sent a copy of XO’s proposed amendment to SBC (the “XO Amendment”). XO’s proposed Amendment language is contained in Exhibit 2, attached to this Petition.

¹ *Unbundled Access to Network Elements*, WC Docket 04-313, and *Review of the Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers*, CC Docket No. 01-338, Order on Remand, FCC 04-290 (rel. Feb. 4, 2005), (*Triennial Review Remand Order*).

9. In XO's Amendment, XO asserts that the *Triennial Review Remand Order* constitutes a change of law that requires the Parties' to amend their existing interconnection agreement.

10. XO believes that an amendment to incorporate changes in law brought about by the *Triennial Review Remand Order* should reflect XO's concern regarding what credits and procedures should apply if a wire center is found to be inappropriately placed on the non-impaired list, and application of relevant Illinois law.

III. JURISDICTION AND APPLICABLE LAW

11. Under the Communications Act, parties to an interconnection negotiation have the right to petition the relevant state commission for arbitration of any open issue whenever negotiations between them fail to yield an agreement. *See* 47 U.S.C. § 252(b). Either party may seek arbitration during the period between the 135th day and the 160th day, inclusive, after the date the ILEC received the request for negotiation. *Id.*

12. Because the Parties have agreed that negotiations began on June 25, 2005, the statutory window for filing a formal request for arbitration opened on November 7, 2005, and closes on December 2, 2005. Accordingly, this Petition is timely filed. Section 252(b)(4)(C) of the Communications Act requires that the Commission conclude the resolution of any unresolved issues within nine (9) months after the request for interconnection negotiation was initiated. 47 U.S.C. § 252(b)(4)(C). Consequently, unless the statutory deadline is waived, the Commission must conclude this arbitration no later than March 25, 2006.

IV. UNRESOLVED ISSUES AND POSITIONS OF THE PARTIES

13. XO and SBC agreed as part of the negotiations process to accept the outcome on all issues arbitrated in Docket 05-0442 as those issues related to the TRRO, as the parties already have an arbitrated agreement related to the TRO. The issues presented here have not been previously arbitrated by this Commission. Exhibit 3 to this Petition contains a matrix of unresolved issues.

14. The Petition reflects SBC's positions as XO understands them at this time. As XO explained elsewhere in this Petition, section 252(b)(4) of the Communications Act mandates that the Commission limit its consideration of any petition for arbitration to the issues set forth in the petition and response thereto. Accordingly, to the extent SBC asserts additional issues, it must do so in its response to XO's Petition in order that the Commission may properly consider them. Therefore, XO expressly reserves the right to respond to any additional issues that SBC may raise in its response.

Issue No. 1 4.1.6

Should the TRRO Amendment include a provision that addresses instances where SBC's designation of non-impaired wire center(s) is found to be incorrect and the wire center(s) reverts back to being an impaired wire center(s)? If so, what credits (if any) and procedures should apply in connection with the reversion?

XO's POSITION: Yes, XO believes that SBC should be held responsible for the financial hardship that XO incurs when SBC has erroneously placed a wire center on the non-impaired wire center list. After a wire center is placed on the non-impaired list, XO will be responsible for both higher transition rates during the transition period, and for disconnecting or converting

UNEs to other SBC wholesale services at the end of the relevant transition period. The only reason XO is subject to the higher UNE transition rates and to the higher wholesale service rates is because SBC has designated a wire center to be non-impaired. SBC has the relevant information for designating a wire center as non impaired, and receives the financial benefit of XO having to pay the higher transition rates and the higher alternative wholesale service rates for so designating a wire center. If SBC is found to have misidentified an office either through a challenge of a CLEC self certification (XO or another CLEC) or by other Commission action, SBC should be required to credit XO for any transition pricing and/or costs of having converted the impacted UNEs to another SBC wholesale service. XO's proposed language to resolve this issue is set forth on Exhibit 2, Section 4.1.6.

SBC's POSITION: SBC is required to indicate what wire centers are non impaired and list the number of fiber collators and lines in a particular wire center. Where SBC learns through its own investigation and in its sole judgment that a wire center has been miss-designated as non impaired SBC will notify the CLEC of it error and reclassify the wire center as impaired.

<p><u>Issue No.2:</u> Section 14, Rider 1. Should the TRRO Amendment include additional provisions setting forth SBC's obligations to provide XO with 13-801 network elements</p>
--

XO's POSITION: Yes, XO believes that the Section 13-801 decision from the Consolidated arbitration in 05-0442 applies equally to TRO and TRRO elements and thus should be included in the TRRO Amendment. The Rider as proposed by XO only applies to TRRO

elements covered in the TRRO Amendment at issue here. XO believes that the decision reached in 05-0442 was not TRO specific and requests that the rider be included in XO's TRRO Amendment. Illinois state law requires certain ILECs, upon request, to provide combinations that are (a) technically feasible, and (b) would not undermine the ability of other carriers to obtain access to unbundled network elements or to interconnect with the ILEC's network. Moreover, an ILEC that denies a request to combine unbundled network elements must demonstrate to the state commission that the requested combination would undermine the ability of other carriers to obtain access to unbundled network elements or to interconnect with the ILEC's network. See 250 ILCS 5/13-801 and 47 C.F.R. § 51.315. This same issue has been litigated numerous times over the past few years and SBC should abide by the law. XO's proposed language to resolve this issue is set forth on Exhibit 2, Rider 1.

SBC'S POSITION: SBC is required to provide unbundled elements only under limited conditions pursuant to section 251.

**V. PROCEDURAL MATTERS AND REQUEST FOR WAIVER OR
VARIANCE OF COMMISSION'S RULES**

15. Section 252(b)(4)(c) of the Communications Act requires that, unless waived by the parties, the Commission should render a decision in this proceeding not later than nine (9) months after the date on which the request for interconnection negotiations is received. By agreement of the parties, the request for negotiations was deemed received on June 25, 2005. Accordingly, the Commission must resolve the issues set forth in the Petition by March 25, 2006.

The parties have entered into a stipulation addressing the procedure for establishing the record in this proceeding. A copy of that stipulation is attached to this Petition. XO requests that this proceeding be conducted in accordance with the terms and conditions in that stipulation.

WHEREFORE, XO respectfully requests that the Commission:

- (1) Arbitrate the unresolved issues identified in this Petition in accordance with Sections 251 and 252 of the federal Telecommunications Act of 1996;
- (2) In such Arbitration, adopt the positions of XO as set forth and require the Parties to enter into an Interconnection Agreement that includes all of the terms the parties agreed to and, on all disputed points, adopts the specific terms and contract language proposed by XO;
- (3) Order the Parties to file on date certain an Interconnection Agreement Amendment between XO and SBC, incorporating the Commission's decision as described above, for approval by the Commission pursuant to Section 252(e) of the Act, and retain jurisdiction of this Arbitration until the Parties have submitted such Interconnection Agreement for approval; and
- (4) Grant such other and further relief as the Commission deems appropriate.

Respectfully submitted,

By: _____
Thomas H. Rowland
Stephen J. Moore
Kevin D. Rhoda

ROWLAND & MOORE LLP
200 West Superior Street
Suite 400
Chicago, Illinois 60610
(312) 803-1000
(312) 475-1589
tom@telecomreg.com
steve@telecomreg.com
krhoda@telecomreg.com

Counsel for XO Communications Services, Inc.

Dated: December 2, 2005

CERTIFICATE OF SERVICE

I, Kevin D. Rhoda, do hereby certify that I have, on this 2nd day of December 2005 caused to be served upon the following individuals, by e-mail, a copy of the foregoing Petition for Arbitration:

Service list

Mark Ortlieb
SBC Illinois
225 West Randolph Street
Floor 25-B
Chicago, Illinois 60601

Kristin Shulman
Executive Director, Regulatory Affairs
XO Communications Services, Inc.
810 Jorie Blvd.
Oakbrook, IL 60523

Thomas H. Rowland
Stephen J. Moore
Kevin D. Rhoda
Rowland & Moore LLP
200 West Superior Street
Suite 400
Chicago, Illinois 60610

EXHIBIT 1

STIPULATION

EXHIBIT 2

XO'S AND SBC'S PROPOSED AMENDMENTS

EXHIBIT 3

MATRIX OF UNRESOLVED ISSUES